

1 *Chapter 18 of Title 26, "1984 Child Protection Act," to be added to Dependent Section*

2 ~~§ 26-18-1. Short title.~~

3 ~~This chapter shall be known as and may be cited as the "1984 Child Protection Act."~~

4 ~~§ 26-18-2. Purpose; precedence of appeals.~~

5 ~~It is the purpose of this chapter to provide meaningful guidelines to be used by the juvenile~~
6 ~~court in cases involving the termination of parental rights in such a manner as to protect the~~
7 ~~welfare of children by providing stability and continuity in their lives, and at the same time to~~
8 ~~protect the rights of their parents. Appeals from an order terminating parental rights or refusing~~
9 ~~to terminate parental rights shall have precedence over all other cases in the court to which the~~
10 ~~appeal is taken.~~

11 **§ 26-18-3. Definitions.**

12 The following words and phrases shall have the following meaning whenever used in this
13 chapter except where the context clearly indicates a different meaning:

14 (1) ABANDONMENT. A voluntary and intentional relinquishment of the custody of a
15 child by a parent, or a withholding from the child, without good cause or excuse, by the
16 parent, of his presence, care, love, protection, maintenance or the opportunity for the display
17 of filial affection, or the failure to claim the rights of a parent, or failure to perform the duties
18 of a parent.

19 ~~_(2) CHILD. The individual under the age of 18 years whose custody is in question or as~~
20 ~~to whom a petition is pending whereby the parental rights of its parents are sought to be~~
21 ~~terminated.~~

22 (3) CHILD-PLACING AGENCY. The same as the term is defined by Section 38-7-
23 2(7).

24 ~~_(4) COURT. The juvenile court or the court exercising jurisdiction over juvenile cases.~~

~~(5) DEPARTMENT. The Department of Human Resources of the State of Alabama.~~

(6) PARENTS. The legal or biological parents of a child, inclusive of a putative father.

~~(7) PETITION. A petition seeking to terminate any or all of the legal rights of one or more parents with respect to a child.~~

(8) PETITIONER. The person who files a petition with the court.

~~§ 26-18-4. Applicability of Rules of Juvenile Procedure; allegation and proof of ability to assume custody of child.~~

~~Unless otherwise provided herein, proceedings to terminate parental rights shall be governed by Title 12, Chapter 15, Article 3 and by the Alabama Rules of Juvenile Procedure. No complaint or petition shall be filed by any party unless it alleges that the party filing the same or a public or private licensed child placing agency is able and willing to assume custody of said child, and no such petition shall be granted except upon proof of such allegations.~~

§ 26-18-5. Who may file petition.

~~(a) A petition may be filed by the~~The Department of Human Resources, any public or private licensed child- placing agency, ~~or parent, with permission of the court~~child, or any interested ~~party~~person may file a petition to terminate the parental rights of the parent or parents of the child.

(a) Mandatory filing of petition by the Department of Human Resources. The Department of Human Resources is required to file a petition to terminate the parental rights of the parent or parents of the child, or if the petition has been filed by another party, is required to seek to be joined as a party to the petition, and, concurrently, to identify, recruit, process, and approve a qualified family for adoption, in the following circumstances:

~~(b1)~~ (1) In the case of a child who has been in foster care ~~under the responsibility in the~~ custody of the ~~department~~ Department for 15 of the most recent 22 months; ~~or,~~

1 ~~(2) If~~ If a child has been abandoned; ~~or~~

2 ~~(3) If~~ the parent has ~~committed-been convicted of~~ murder of another child of
3 that parent; ~~or~~

4 ~~(4) If the parent has committed-been convicted of voluntary~~ manslaughter of another
5 child of that parent; ~~or~~

6 ~~(5) If the parent~~ has aided, abetted, attempted, conspired, or solicited to commit
7 ~~such a~~ murder or ~~such a voluntary~~ manslaughter; ~~or~~

8 ~~(6) If the parent~~ has ~~committed-been convicted of~~ a felony assault that has
9 resulted in serious bodily injury, as defined in Section 26-18-7, to the
10 child, ~~or~~ to another child of the parent, or to the other parent of the
11 child.~~the department shall file a petition to terminate the parental rights of the parents of~~
12 ~~the child, or if the petition has been filed by another party,~~
13 ~~seek to be joined as a party to the petition, and, concurrently, to identify, recruit, process,~~
14 ~~and approve a qualified family for adoption unless one of the following occurs:~~

15 ~~(b) Exceptions to mandatory filing:~~

16 (1) The child is being cared for by a relative.

17 (2) The ~~department~~ Department has documented in the ~~case-individualized~~
18 service plan, which shall be available for court review, a compelling
19 reason for determining that filing a petition would not be in the best interests of the child.

20 (3) The ~~department~~ Department has not provided to the family of the child, consistent
21 with the time period in the ~~department's case~~ individualized service plan of the
22 Departament, such services as the ~~department~~ Department deems necessary for the
23 safe return of the child to the ~~child's~~ home of the child, if reasonable efforts are
24 required to be made with respect to the child.

1 **§ 26-18-6. Service of process.**

2 ~~_(a) This section shall be known and cited as the "Child Abandonment Act."~~

3 ~~(ba)~~ Except as otherwise provided by the Alabama Rules of Juvenile Procedure and this
4 section, service of process shall be made in accordance with the Alabama Rules of Civil
5 Procedure.

6 (b) If service of process has not been completed within 90 days of the filing of the petition,
7 the petitioner shall request service by publication.

8 ~~_(c) The state shall have jurisdiction over an abandoned child and the absent parent or~~
9 ~~parents, whether they reside within the state or outside of the state, with respect to all issues~~
10 ~~under this section.~~

11 ~~(d) The state agency or private agency having custody of the abandoned child shall make~~
12 ~~every reasonable effort to determine if the child was intentionally abandoned by the parent or~~
13 ~~parents.~~

14 ~~(e) Within 14 calendar days following the period required under Section 26-18-7, the state~~
15 ~~agency or private agency having custody of the abandoned child shall petition the juvenile court~~
16 ~~having jurisdiction over the child to terminate parental rights to the abandoned child.~~

17 ~~(f) The state agency or private agency having custody of the abandoned child shall within 90~~
18 ~~days complete service of process on the child's parent or parents or, upon failure of service of~~
19 ~~process, petition the court to order service by publication.~~

20 ~~(g) Service of process by publication may be used by a juvenile court having jurisdiction~~
21 ~~over an abandoned child when all of the following conditions are met:~~

22 ~~(1) The court has reached a point in the proceedings concerning an abandoned child~~
23 ~~where the only remaining proceeding is the final disposition of the case.~~

~~(2) The final disposition sought is the termination of parental rights for the purpose of placing the child for adoption.~~

~~(3) The child who is the subject of the proceedings was abandoned in the state.~~

~~(4) The state agency or private agency having custody of the child has established, by evidence presented to the court of competent jurisdiction, that the absent parent or parents are avoiding service of process or their whereabouts are unknown and cannot be ascertained with reasonable diligence.~~

(hb) Service of process by publication may be ordered by the court ~~if the requirements of subsection (g) unless the following conditions~~ are met—:

(1) The child who is the subject of the proceedings was abandoned in the State; and

(2) The state or private agency having custody of the child has established, by evidence presented to the court of competent jurisdiction, that the absent parent or parents are avoiding service of process or their whereabouts are unknown and cannot be ascertained with reasonable diligence.

(c) Service shall be made by publication in a newspaper of general circulation in the county of the court having jurisdiction and in the county of the last known address of the parent or parents of the abandoned child, at least once a week for four consecutive weeks.

~~(i) For purposes of this section, "abandoned child" means a minor abandoned by his or her parents as defined in Sections 26-18-3 and 26-18-7.~~

§ 26-18-7. Grounds for termination of parental rights; factors considered; presumption arising from abandonment.

(a) If the court finds from clear and convincing evidence, competent, material, and relevant in nature, that the parents of a child are unable or unwilling to discharge their responsibilities to and for the child, or that the conduct or condition of the parents is such as to render them unable

1 to properly care for the child and that such conduct or condition is unlikely to change in the
2 foreseeable future, it may terminate the parental rights of the parents. In determining whether ~~or~~
3 ~~not the parents are unable or unwilling to discharge their responsibilities to and for the child to~~
4 ~~terminate the parental rights~~, the court shall consider ~~and in cases of voluntary~~
5 ~~relinquishment of parental rights may consider the following factors, including~~, but not be
6 limited to, the following:

7 (1) That the parents have abandoned the child, provided that in such cases, proof shall not
8 be required of reasonable efforts to prevent removal or reunite the child with the parents.

9 (2) Emotional illness, mental illness or mental deficiency of the parent, or excessive use
10 of alcohol or controlled substances, of such duration or nature as to render the parent unable
11 to care for needs of the child.

12 (3) That the parent has tortured, abused, cruelly beaten, or otherwise maltreated the child,
13 or attempted to torture, abuse, cruelly beat, or otherwise maltreat the child, or the child is in
14 clear and present danger of being thus tortured, abused, cruelly beaten, or otherwise
15 maltreated as evidenced by such treatment of a sibling.

16 (4) Conviction of and imprisonment for a felony ~~or conviction for one of the following:~~

17 ~~a. Murder or manslaughter of another child of that parent.~~

18 ~~b. Aiding, abetting, attempting, conspiring, or soliciting to commit murder or~~
19 ~~manslaughter of another child of that parent.~~

20 ~~c. A felony assault or abuse which results in serious bodily injury to the surviving~~
21 ~~child or another child of that parent. The term "serious bodily injury" means bodily~~
22 ~~injury wich involves substantial risk of death, extreme physical pain, protracted and~~
23 ~~obvious disfigurement, or protracted loss or impairment of the function of a bodily~~
24 ~~member, organ, or mental faculty.~~

1 (5) Unexplained serious physical injury to the child under such circumstances as would
2 indicate that such injuries resulted from the intentional conduct or willful neglect of the
3 parent.

4 (6) That reasonable efforts by the Department of Human Resources or licensed public or
5 private child care agencies leading toward the rehabilitation of the parents have failed.

6 ~~(7) That the parent has been convicted by a court of competent jurisdiction of any of the~~
7 ~~following:~~

8 ~~a. Murder or voluntary manslaughter of another child of that parent.~~

9 ~~b. Aiding, abetting, attempting, conspiring, or soliciting to commit murder or~~
10 ~~voluntary manslaughter of another child of that parent.~~

11 ~~c. A felony assault or abuse which results in serious bodily injury to the surviving~~
12 ~~child or another child of that parent. The term "serious bodily injury" means bodily~~
13 ~~injury which involves substantial risk of death, extreme physical pain, protracted and~~
14 ~~obvious disfigurement, or protracted loss or impairment of the function of a bodily~~
15 ~~member, organ, or mental faculty.~~

16 ~~(87)~~ That parental rights to a sibling of the child have been involuntarily terminated.

17 ~~(b) Where a child is not in the physical custody of its parent or parents appointed by the~~
18 ~~court, the court, in addition to the foregoing, shall also consider, but is not limited to the~~
19 ~~following:~~

20 ~~(18)~~ Failure by the parents to provide for the material needs of the child or to pay a
21 reasonable portion of its support, where the parent is able to do so.

22 ~~(29)~~ Failure by the parents to maintain regular visits with the child in accordance with a
23 plan devised by the department, or any public or licensed private child care agency, and
24 agreed to by the parent.

(310) Failure by the parents to maintain consistent contact or communication with the child.

(411) Lack of effort by the parent to adjust his or her circumstances to meet the needs of the child in accordance with agreements reached, including agreements reached with local departments of human resources or licensed child-placing agencies, in an administrative review or a judicial review.

(eb) A rebuttable presumption that the parents are unable or unwilling to act as parents exists ~~In in~~ any case where the parents have abandoned a child and such abandonment continues for a period of four months next preceding the filing of the petition, ~~such facts shall constitute a rebuttable presumption that the parents are unable or unwilling to act as parents~~. Nothing in this subsection is intended to prevent the filing of a petition in an abandonment case prior to the end of the four-month period.

§ 26-18-8. ~~Transfer of custody~~Dispositions.

Termination of parental rights cases shall be tried as expeditiously as possible If the court determines that the parents of a child are incapable to act as parents and terminates their parental rights, it may:

(1) Transfer or continue the ~~permanent~~ legal custody of the child to the ~~department~~ Department of Human Resources or to any public or private licensed child-placing agency-able and willing to assume the care and maintenance of the child, ~~with or without an order to proceed with plans for the adoptive placement of the child~~. A court order which terminates parental rights and awards ~~permanent~~ legal custody to the Department of Human Resources or to a licensed child-placing agency shall mean that the ~~said~~ ~~department~~ Department or ~~said the~~ licensed child-placing agency shall have authority to-

1 make permanent plans for the child, including the authority to place for adoption and consent
2 to adoption.

3 (2) Transfer or continue the ~~permanent~~ legal custody of the child to ~~a relative or other~~
4 ~~individual~~ the petitioner who, after study by the department, is found to be able to properly
5 receive and care for the child.

6 **§ 26-18-9. Periodic review of efforts to achieve adoption of child in custody of another**
7 **after parental rights terminated.**

8 Where the court has terminated the parental rights ~~and responsibilities of the parents~~ and has
9 placed legal custody of the child with the ~~department~~ Department of Human Resources or with
10 ~~a public or private licensed child- placing agency, or with an individual,~~ the court shall,
11 at least ~~yearly~~ annually, review the circumstances of the child to determine what
12 efforts have been made to achieve the ~~adoption of permanency for~~ the child.

13 **§ 26-18-10. Authority of one in custody to place child for adoption or consent to adoption.**

14 Upon the court's termination of parental rights and placement of custody of a child with any
15 agency, ~~person~~ or department, any such agency, ~~person~~ or department shall have the authority
16 to place ~~said the~~ child for adoption or to consent to ~~said the~~ adoption.

17 ~~§ 26-18-11. Applicability~~

18 ~~The provisions of Sections 26-18-5 and 26-18-7 as amended by Act 98-370, regarding~~
19 ~~termination of parental rights petitions required to be filed by the Department of Human~~
20 ~~Resources shall apply to all children coming into foster care after April 22, 1998. In the~~
21 ~~case of children in foster care on April 22, 1998, the department shall comply with the~~
22 ~~timetable established by federal law for the processing of such cases.~~